

The Realization Mechanism and Legalization of CSR

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Abstract

The provisions that for-profit legal persons and companies should "assume social responsibility" are mainly embodied in Article 86 of the Civil Code and Article 5 of the Company Law, but these provisions are legal principles and lack enforceability. This paper will start with the definition of stakeholder's scope, and analyze the reasons that hinder the implementation of CSR in China, and then, on the basis of practice, discuss the path and measures to implement CSR from both internal and external aspects. The internal measures focus on the duty of trust function of the managers, the supervisory board and the board of directors, external measures focus on the discussion of the advantages and disadvantages of third-party credit rating agencies and settle on the promotion of China's CSR legal regulation.

Keywords

CSR; Internal and External Realization Mechanism; Corporate Credit Rating; Legalization Regulations.

1. Introduction

With the rapid development of China's economy, Company has played a subtle impact on the economy, politics, society, culture, ecology and other aspects because its number of growth, expansion of scale and the enrichment of functions. Companies are no longer a simple "profit-seeking organizations" in traditional theory, it also needs to assume some social responsibility in addition to profit-seeking responsibilities. Since the 1930s, people have been enthusiastic about the discussion of CSR. But there is no exact and universal concept of what CSR is. This paper argues that, CSR refers to the company's responsibility to the relevant interest groups that have direct or indirect contact with the company and the public interests that government representatives, that is, to protect the interests of shareholders, operators, creditors, suppliers, employees, consumers, residents of the company, as well as related tax, environmental protection interests. However in real life, companies which sacrifice the health of consumers and destroy the ecology are not a few. The 2020 Luzhou Milk Powder Incident has brought the public's vision to focus on the CSR once again. There have been courts that have adopted CSR as the basis for the ruling in the judgment [1]. This practice trend has prompted the academic circle to speed up discussions on the implementation of social responsibilities.

2. The Definition of Stakeholder Scope

As the theoretical basis of CSR, the academic circle mostly use the "stakeholder" theory popular in the 1980s. This theory directly affects the scholars' judgment and interpretation of the connotation of CSR.

An important reason why the connotation of CSR is not fixed is that scholars still have a debate about whether shareholders should be listed as stakeholders. Most scholars who oppose the inclusion of shareholders in stakeholders start from the traditional theory of Company Law, it is clear that profitability is the essential characteristic of the company, and the company is

therefore considered to be a tool to maximize the interests of shareholders. Although the company exists independently of the investors once established, as the company's funders, the growth of the company's interests also means the increase of shareholders' interests. Therefore, since CSR has added the prefix of "society", its targets will of course exclude shareholders. But scholars who agree that shareholders should be categorized as stakeholders believe that the establishment and operation of a company depends on the related entities associated with it, which, including shareholders, operators, consumers, ect., constitute stakeholders. And the company should not only pay attention to the interests of shareholders, but also to the interests of other stakeholders. Implementation of CSR is not one-sided harm to the interests of one party to benefit the other, but to balance conflicts and contradictions between stakeholders. Its social responsibility is conducive to the development of the company in the corporate governance strategy, which in turn benefits the continuous increase of shareholders' interests.

Another reason is the relationship between the interests of the company and the interests of shareholders. Scholars who oppose the inclusion of shareholders in stakeholders believe that the social responsibility of the company sometimes obtain long-term benefits, or even no return on benefits, which is contrary to the company's profit-making purposes and shareholders' interests. If the shareholder is also listed as counterparty of the obligations, the company will also harm the interests of the counterparty in fulfilling its social responsibilities. Scholars who agree with the inclusion of shareholders in stakeholders argue that maximizing shareholders' interests is not the same as maximizing the company's interests. The company has its own independent interests, which are neither equivalent to the interests of any related interest group nor a simple superimposition on the interests of all stakeholders [2]. However, because shareholders invest in the company and bear the corresponding risks, their interests are closely linked and positively related with the company's interests, the company needs to give priority to shareholders' interests when making any decision. Therefore, under certain circumstances, for the long-term interests and sustainable development of the company, the growth of shareholders' interests can be temporarily suppressed.

In view of the above-mentioned disputes, the author thinks that the scope of stakeholders should include shareholders. Companies in modern society should not only be seen as tools to maximize the interests of shareholders, but as an integrated organization that takes into account and realizes the interests of all stakeholders of the company, including shareholders, to the maximum extent. The company not only has the financial responsibility of its essential attributes, but also the social responsibility of being a Corporate citizenship, and the manager is responsible to all stakeholders of the company, not limited to the shareholders. The benefits of listing shareholders as stakeholders, in addition to confirming that the company should be responsible to stakeholders other than shareholders, it also enables shareholders to subjectively regard themselves as the counterparty of their social responsibilities, changing their sense of opposition, helping shareholders realize the positive role of social responsibility for their own interests, and promoting the company to fulfill social responsibility more voluntarily.

Based on this view, the performance of social responsibility by a company is an act of adjusting and balancing the conflicts of interest among stakeholders without harming their own interests.

3. Analysis of the Reasons for the Obstacles to the Implementation of CSR

At present, the awareness of Chinese companies to assume social responsibilities has been greatly improved compared to previous years, especially during the pandemic of COVID-19. Some companies bought masks from overseas and donated them to medical staff, some transformed factories to step up the production of non-woven fabrics to alleviate the shortage

of masks, and some spontaneously organized employees to provide daily help to community residents and medical staff. These actions show the world the responsibility of Chinese enterprises. However, how to implement CSR is still a problem that is difficult to break through in practice. Before exploring the path of realizing CSR, we might as well clarify the reasons and main obstacles that are difficult to achieve, and put forward targeted solutions.

3.1. The Nature of CSR Is Insufficiently Coercive

According to the above concept, it is not difficult to conclude that CSR is a comprehensive responsibility, which contains both legal and moral responsibilities. Judging from the inclusion of CSR in the Civil Code and the Company Law, CSR is undoubtedly a legal liability in nature, and it has the characteristics of legal coercion and fixation. However, from the content and implementation of CSR, the nature is more inclined to moral responsibility, with stronger arbitrariness and discretion. Therefore, most scholars divide CSR into multiple levels, and confirm its attributes from different angles, which is conducive to analyse the implementation mechanism of the company's social responsibility according to different levels of the classification basis. According to this, the author divide CSR into following three levels.

First, CSR is a mandatory social responsibility.

The company is regarded as a fictitious person by law, and like a natural person, it shall abide by the law and bear legal responsibilities. Operating according to law, fulfilling legal responsibilities is the minimum standard, and assuming moral responsibilities is the significance of CSR. Although CSR is a principled piece of legislation in both the Civil Code and the Company Law, it also explains from the side that CSR should be taken seriously as an important principle of the company's operation and development. In addition to the principled provisions, specific provisions on social responsibility are also scattered in various laws. These provisions start from the protection of the legitimate interests of stakeholders, and set obligations for the company in the opposite direction, such as the Protection of Consumers' Rights and Interests Law, Labor Law and Environmental Protection Law. It is precisely because social responsibility is too high to be uncontrollable that more controllable legal liabilities should be detailed as much as possible. Starting directly from the object of protection not only shortens the time for the company to clarify its obligations, but also helps to protect the interests of stakeholders efficiently. Fulfilling social responsibility in the legal sense is, in short, fulfilling legal obligations.

Second, CSR is a kind of social responsibility that between morality and law.

The author thinks that although operating according to law and fulfilling legal obligations is one of the conditions for the continuous operation of a company, it is far from enough to just fulfill legal responsibilities. In addition to legal liability, it is also necessary to comply with some related regulations, which is more conducive to promoting the long-term development of the company. These provisions are directly expressed in the form of "Guidance" or "Guidelines" rather than starting from the object of protection like legal responsibility. For example, the Governance Guidelines for Listed Companies, the Guiding Opions on the Performance of Social Responsibility of Central Enterprises, the Guidelines for Social Responsibility of Listed Companies, etc. Although the social responsibilities stipulated in these documents are not formulated by official legislatures and lack general binding force in the legal sense, those formulated by relevant authoritative institutions can be universally recognized in the industry and have actual binding force. Some scholars call them "soft laws" and others call it "social responsibilities in business ethics" [3]. The author thinks that the social responsibilities in business ethics are more inclined to customs of merchants and customary rules. The company is basically an economic organization, in order to promote and maintain the smooth progress of transactions, as well as the continuous growth of the interests of the company and shareholders, follow the trading habits and principles in commercial field, manage the company

with integrity, make reasonable decisions, safeguard the rights and interests of employees. These conceptions seem to be beyond the scope of the law and carry the connotation of business ethics, but they are the primary state of the company's social responsibility in a substantial sense. However, in practice, China's detailed regulations on CSR focus more on listed companies, state-owned enterprises and financial institutions, and lack the management to small and medium-sized companies, and most of the documents are not mandatory, so the company's management has a lot of freedom.

Third, CSR is a kind of social responsibility based on ethical goals.

Such responsibilities are based on the company's own pursuit of a higher value. Carol, a western scholar, defines as charitable responsibilities, such as establishing charity funds, proactively improving the treatment of employees, and innovating technologies to reduce environmental pollution [4]. The public hope that companies can act with higher moral obligations. However, the performance at this level largely depends on the opinion of the company's management. If the social responsibility at the previous level still has some mandatory colors, then there is basically no coercive force in the social responsibility of moral goals. Because at the ethical level, this is neither an obligation nor a duty. As a Corporate citizenship, the company is the same as a natural person. Although it has no statutory obligation to perform certain responsibilities, it has a moral obligation to perform it. However, such social responsibility also has higher requirements for the performance. Ordinary small and medium-sized companies are rarely able to undertake it effectively. So more often, it can be undertaken only by promoting large companies such as listed companies or state-owned enterprises.

In summary, CSR is a combination of legal responsibility and moral responsibility. Because of its nature is both mandatory and arbitrary, so in order to ensure the effectiveness of the performance of CSR, in addition to stipulating the implementation of legal obligations, it is necessary to formulate social responsibility legal norms that conform to China's market economy.

3.2. The Conflict Between the For-profit Nature of the Company and Social Responsibility

Milton Friedman, a well-known economist, once wrote: "The concept of social responsibility is essentially upside down, and a company has only one and only business social responsibility to make good use of resources and energy in its activities to increase profitability [5]." The traditional theories of economic and Company Law believe that the profitability of a company determines that the company only needs to do its utmost to maximize the interests of shareholders. If the company can use resources as efficiently as possible to produce the products and services needed by society and by selling them at a price that consumers are willing to pay, the company has fulfilled its social responsibility [6]. Companies rely on profit as the basis for survival. If a company is on the verge of bankruptcy, it will not be able to consider social responsibility issues. In the final analysis, the company is an economic for-profit organization first, and a comprehensive organization second. Although the theory of Corporate citizenship refers to the company as a citizen, enjoys the rights of citizens and assumes the obligations as well, it is not appropriate to equate the two completely. It cannot be denied that companies have many similarities with citizens, for example the most important thing of the two is "life", but the ways of maintaining life are quite different. Natural persons are maintained in a physiological sense, and companies are maintained in an economic sense. Therefore, the first consideration of a company's shareholders, directors, managers and employees is of course the economic interests, while social responsibility is placed at a lower position. In the commercial field, "paid" and "consideration" are the value goals of engaging in commercial activities. After fulfilling its social responsibilities, companies also hope to obtain the benefits that cannot be gained from operating activities. The rewards often take a long time to appear,

therefore, companies need to have sufficient capital base to wait for the feedback of social responsibility benefits. When the company develops well, the capital operation is fluent and there is a good market for development, the company's senior management may consider the company's goodwill, image maintenance, social responsibility (often also to maintain goodwill) and other issues.

3.3. The Regulations on the Subject and Object of the Company's Obligations Are Vague

As mentioned earlier, the concept of CSR has not been uniformly fixed. Laws in China generally respond to the public's concern about CSR, but the relevant provisions are principled and abstract, their form is greater than the content.

The first problem is the obligation subject, the responsibility subject in the Civil Code is generally provided as the profit-making legal person, and the Company Law provides the company, both of which are the general name of the collection. In the lower-level legal regulations or relevant regulatory documents, the responsible party is rarely specified in the company's internal organization. So should the shareholders' meeting make the decision or the board of directors more appropriate? If it is made by the shareholders' meeting, since the interests of shareholders are directly proportional to the interests of the company, the resolutions of the shareholders' meeting are generally based on the premise of maximizing the interests of the company, and then consider the issue of social responsibility. Also because most of the time the interests of shareholders and the interests of the rest of the stakeholders are in the opposition from a superficial level, the benefits of social responsibility are not obvious from the perspective of short-term benefits. This may greatly affect the decision making in favor of other stakeholders to a large extent, that is, hinder the fulfillment of social responsibilities. If it is made by the board of directors, how much influence should shareholders have on relevant decisions? According to the principle of the independence of the three committees of the company, directors should abide by the duty of loyalty, diligence and prudence to the company. From the traditional theory, the fiduciary duty of directors originates from the company rather than shareholders, but some scholars believe that the fiduciary duty of directors from shareholders. In the case of originating from the company, the assumption of social responsibility is based on the premise of maximizing the company's interests. Unlike shareholders, directors, in making decisions, in addition to considering business interests, will also consider the relevant social values in terms of goodwill and corporate image, which is conducive to the company's social responsibility and protection of the rights and interests of stakeholders. Then in the case of originating from shareholders, the three obligations of directors are the shareholders behind the company, and they may also be affected by shareholders when considering the company's long-term interests.

The second issue is the object of obligation. The question of whether stakeholders should include shareholders has been discussed earlier. Due to the uncertainty of the scope of the object, the performance object that the company can consider is also limited. In addition to operating in accordance with the law, strictly abiding by laws and regulations which protect the rights and interests of relevant subjects and carrying out activities in accordance with the standards of the commercial field, companies often have no time to consider and do not know to whom they should perform their ethical obligations. This is also one of the reasons why it is difficult to further implement in reality.

3.4. Corporate Information Disclosure Awareness Is Not Strong and the Relevant Provisions Are Not Perfect

As early as 2007, some companies in China have published reports about social responsibility. In 2007, for example Chinese Life Insurance Company released the "Chinese Life Social Report".

This report on state-owned insurance companies provides a model for other companies in the insurance industry and also sets an example. The White Book of Chinese CSR Reports (2018) shows that the number of social responsibility reports issued by enterprises continued to increase in this year, There is a clear upward trend in the release volume of large and medium-sized enterprises, especially private enterprises, which shows that the overall social responsibility awareness of Chinese enterprises is constantly improving. However, as mentioned above, the profitability of the company, coupled with the relevant regulatory agencies or industry associations on the CSR report content of the follow-up assessment and processing of the work is not more detailed and fixed provisions. Therefore, even under the overall upward trend, the results of corporate social responsibility reports presented by companies of different industries and sizes are also uneven. In particular, the content of the published report, whether there are many aspects to respond to the concerns of stakeholders, how authentic and credible the data in it, whether there is a development plan or whether the development plan is operational, etc. Only the disclosure of true information, a clear response to social concerns, and the possibility of practice are the project reports that the public really want to see, rather than a summary of a same, perfunctory, or unable to query the authenticity of the data. As more and more companies publish social responsibility reports worthy of attention and praise, we should be clear that in addition to the increase in the number of social responsibility reports, we need to emphasize the enthusiasm of enterprises to assume social responsibility and the improvement of the quality of information disclosure. Regarding the content and format of the social responsibility report and how to verify the authenticity of the data contained therein, it is necessary for different industries to formulate complete and detailed social responsibility report rules based on the characteristics of the industry, so as to standardize the report form, improve the quality of the report, and promote Increased awareness of corporate information disclosure in China.

3.5. Imperfect Laws And Regulations and Lack of Application of International Standards

On the whole, China's legal system on social responsibility is still incomplete, and the various departmental laws are independent of each other, and some specific provisions are most restricted to state-owned enterprises and listed companies. The state ensures the fulfillment of corporate legal responsibilities from the legislative and law enforcement levels. The minimum legal responsibilities cannot be selected and must be implemented. Therefore, it is difficult to implement the social responsibilities between morality and law and the social responsibilities of moral goals. Although in recent years, China has paid more and more attention to the improvement of relevant laws and regulations, provincial and municipal governments have issued guidance, guidelines and evaluation methods on CSR successively. However, the level of detail of documents varies from province to province. Industry organizations issue guidelines, guidelines or evaluation systems for social responsibility in a separate or joint manner, but mostly focus on finance and listed companies, and their coverage is relatively limited. There are two reasons why the company can voluntarily assume the responsibility of advocacy without coercive force. One is to have noble sentiment and moral consciousness, and the other is to be profitable. At present, policies in various parts in China mostly use advocacy statements to persuade and publicize, setting a "ethical benchmark" for the company, but rarely mention specific encouragement or policy preferences after commitment. Based on the consideration of pursuing interests, companies dare not act rashly when there is no substantial benefit.

The principled legislation on CSR in China has been mentioned repeatedly. Scholars generally believe that such principled legislation sets certain behavioral requirements for companies, and at the same time, such flexible norms give courts or judges a certain degree of discretion. Social responsibility may be used as a basis for judgement by interpretation in the trial. As far as the

existing cases of judicial decisions are concerned, the judges have not yet reached a high degree of uniformity on the question of whether to apply the "social responsibility clause". On the question of whether CSR should be legalized, the author believes that there is no doubt at the level of legal liability, and for the moral level should not be dealt with excessively by judicial methods. When formulating corresponding laws and regulations, the author proposes to categorize and classify social responsibilities with higher arbitrariness. For the more urgent social issues in the current society, give priority to formulating laws and regulations, and then formulate corresponding performance norms according to different types and economic strengths of enterprises.

In addition, there are some standards such as "SA8000" (Social Accountability 8000 International Standard), Fortune Corporate Reputation Standards and Moskowitz Reputation Index, which apply to all companies worldwide. But domestic companies are still confused about local standards and they are not even aware of applicable international standards. And international standards compared with China's local standards, there is still a need to make corresponding adjustments according to China's real economic and social development situation. We comply with international standards so that the domestic companies and enterprises can better integrate with international standards. The establishment of a corporate social responsibility standard system with Chinese characteristics can promote the sustainable development of enterprises based on the Chinese market.

In general, the implementation of CSR is the result of multi-party cooperation. It is necessary for companies to coordinate the conflict between social responsibility and the nature of profitability, and it is also necessary to improve legislation to overcome the difficulty of implementing social responsibility itself due to moral factors. Therefore, the importance of coordinated adjustment of internal and external measures is self-evident.

4. Expioration of the Realization Mechanism of CSR

Since the revision of the Company Law in 2005, the implementation of CSR has been a hot topic in academic circles. The reasons that hinder companies from fulfilling their social responsibilities can be divided into internal and external aspects, and CSR should ultimately be implemented at the corporate governance and organizational levels. Requiring the company to take "social responsibility" is actually asking directors and management to take it. They are required to make business decisions and supervise the company in the process of considering the long-term interests of the company and take into account social, ethical and other factors [7]. Therefore, in the internal exploration, the author one is focused on the exploration mechanism, organization and management process of operational improvement, and the other is to explain the relationship between the director's fudiciary duty and CSR, and consider the improvement of the director mechanism from this perspective. In the external aspect, this article focuses on the functions of third-party credit rating agencies and the corresponding pros and cons, and finally settles on the promotion of the legalized regulation of CSR in China. Of course, in addition to the external mandatory constraints of the law, the initiative of the management of the company is also an essential element for the implementation of CSR. CSR is actually a business judgment made by the company's shareholders and the board of directors in the course of business operations for the purpose of measuring interest, and the specific measures are mainly negotiated and decided by the company's directors. Therefore, in addition to regulations at the legislative and law enforcement level, it needs to be implemented through the company's internal institutions, especially the board of directors.

4.1. Internal Implementation Mechanism

4.1.1. Enhancing the Awareness of Problem Discovery Among Managers

The manager is appointed by the board of directors and is authorized to be responsible for the company's daily operation and management. From the perspective of realizing behavior, the manager level is the last link to fulfill social responsibilities, and it is also the most direct management could contact with employees who may fulfill the social responsibility. For example, the protection of workers' rights and interests, creditors' interests, product upgrades, environmental protection, etc., these contradictions will be the first in the company's daily operation process. Therefore, in addition to considering KPIs, managers should also increase their awareness of issues, especially non-commercial issues in production and management.

First of all, as professional managers, commercial issues belong to their professional scope and it is easier for them to detect. Social contradictions in the commercial field have both professional and complex in real life, so they are more likely to be ignored by managers. Second, if contradictions can be found in time from managers, it will help to solve problems in a relatively short time, thereby increasing efficiency, just as sectoral law specifically provides for the protection of the interests of stakeholders. In addition, the problems and contradictions gathered from the company's daily operations can collectively reflect the company's shortcomings in CSR, thus providing resources for the board of directors to make meso decisions, which is conducive to the board of directors to formulate decision-making programs of social responsibility with industry and corporate characteristics. In addition to enhancing the manager's awareness of problem discovery, it is also necessary to cultivate the problem discovery awareness of employees. Hold regular exchange meetings to gather problems, and formulate rewards or incentive mechanisms within the company to encourage employees to find problems at work and dare to speak out them. This can enhance the company's overall sense of social responsibility from the bottom up, forming a virtuous circle, and promote economic and social development.

4.1.2. Strengthen the Functions of the Supervisory Board

In addition to discovering problems from its own operation and management process, the company should also pay attention to and give full play to the supervisory function of the board of supervisors on the directors' operational decisions and the executive management. At the same time, the Supervisory Board should also establish a sense of CSR, and it may refer to Article 53 (3) of the Company Law: When acts of directors and senior officers harm the company's interests, directors and senior managers are required to rectify such acts. The "harm to the interests of the company" is not limited to the economic interests, but should also include the company's comprehensive interests and the long-term benefits of stakeholders. In the daily operation of the company, if the company improperly compresses the rights and interests of employees, harms the interests of creditors, or violates relevant industry standards, the board of supervisors shall promptly draw the attention of the board of directors and senior management and supervise corrections. Article 54 (1) of the Company Law provides that supervisors may attend meetings of the board of directors as non-voting attendees and may make inquiries or suggestions to the matters to be resolved by the board of directors. From this function, when listening to board meetings, members of the supervisory board have the right to question and advise in the face of resolutions that may violate social responsibility between ethics and law, i.e., certain resolutions may violate guidance issued by relevant departments, industry standards issued by authorities, business customs, or ethical responsibilities generally observed by society. This function requires the supervisory board to have a familiar understanding of the relevant administrative normative documents, industry guidelines and various business practices and customs of the company's industries, and to be able to quickly

retrieve the above regulations before the resolutions are made, and promptly supervise the board of directors to amend the resolutions.

4.1.3. Legalization of Directors' Fiduciary Duty

Articles 21, 147, 148 and 149 of the Company Law provide for the duty of loyalty and diligence for directors, supervisors, and senior officers. The main subjects of fiduciary duty are directors and senior managers, because they are actually the people who ultimately assume management responsibilities. In discussing the scope of stakeholders, the author puts forward that the company's social responsibility is an act of adjusting and balancing conflicts of interests among stakeholders without harming their own interests, while the director is the connecting point of this link. However, there is also a great controversy in the theoretical circle about who the directors are obliged to.

Modern theory generally believes that, in principle, directors' fiduciary duty comes from the company, not shareholders, so the object of the fiduciary duty is the company. With the development of modern companies, the ownership and management rights are separated, shareholders can not directly intervene in corporate operation and management, so it is necessary to entrust the elites in this field to manage the company. So in this process, the director is not only the principal of the shareholders, but also the principal of the company. The traditional theory regards directors as a tool for maximizing the shareholders' interests. However with the development of market economy and the evolution of the company system, the shareholders' meeting, the board of directors and the supervisory board are separated and each performs its respective duties. Therefore, the directors' fiduciary duty to shareholders is only due to the shareholders' investments in the company, which is regarded as a tool for obtaining investment returns. The maximization of the company's interests and the maximization of shareholders' interests are unified, so indirectly it can be considered that the directors also have the fiduciary duty to shareholders. However, we should emphasize that the directors' duty to shareholders are secondary. When directors decide on the company's business plan, investment plan, financial and final accounts plan, profit distribution and loss recovery plan, and other plans related to the overall interests of the company and stakeholders, they should proceed from a more macro perspective, in addition to considering the profit probability, risk control and performance indicators for the year, they should also safeguard the interests of small and medium-sized shareholders (this article believes that shareholders also belong to the scope of stakeholders) and the legitimate rights and interests of stakeholders other than shareholders. Although the directors' fiduciary duty is closely related to social responsibilities, how to implement it through legal means is still in the research stage in China. In this regard, many scholars have also put forward their own views, such as Mr. Zhou Shurong proposed the principle of "two-in-three-three" for the board of directors, which distinguishes executive directors from non-executive directors, and the board of directors is composed of executive directors, employee directors, and stakeholders' representative directors. Each accounted for one third [8]. Professor Jiang Daxing also proposed the establishment of a special CSR committee mechanism to improve social corporate governance and allow stakeholders to enter the system path of the board of directors [9]. The author believes that the prerequisite of allowing social factors into the board of directors is not to change the fundamental role of the board of directors, and on this basis to introduce social interference factors. The purpose of introduction is not to subvert the company's functions and turn the cart before the horse, but to achieve a win-win situation. If stakeholders other than shareholders control the decision-making power in the composition of the board of directors, it is possible that the board of directors will be inefficient and that the resolutions it adopts will not well meet the company's for-profit needs. The establishment of a company-specific social responsibility committee and an independent director system has been adopted by some large companies. In this regard, Professor Jiang Daxing believes that for large companies, a better way to coordinate the

relationship between CSR with corporate business judgment in the area of corporate governance is not to involve stakeholders on the board of directors for voting, but to set up a special social responsibility committee in the board of directors of the company, which is responsible for assessing the impact of social responsibility involved in daily business judgments [10]. The members of the social responsibility Committee vary from different companies. Directors, manager, and elites from all walks of life. Here, the author prefers that the members of the CSR Committee be composed of different types of persons. It should include, but is not limited to, directors, managers, employees, and experts. The directors here are similar to independent directors and have nothing to do with the interests of the company. They are mainly responsible for the collection and screening of CSR information. The functions of managers and employees are similar, both of which reflect problems in daily business process. The difference is that, as mentioned in the previous managerial measures, the managerial information is mainly a summary of the employees, but there is no guarantee that the problem will be omitted without subjective filtering by the managerial staff. Employees complement and provide more detailed informations. Experts play a role in answering questions in the Committee. Just as judges in the face of professional issues need to ask expert, when the social responsibility directors collect the questions and classify them, they can seek reference opinions from experts and elites in different fields, and finally form a solution to submit a resolution to the board of directors.

In view of the limited ability of small and medium-sized companies to fulfill their social responsibilities, the criteria for judging small and medium-sized companies need to be considered first. The "Statistical Measures for the Classification of Large, Medium, Small and Micro Enterprises (2017)" classifies Chinese enterprises according to industry categories, employees, operating income, total assets and other indicators. The author believes that medium-sized and above enterprises should appropriately perform their social responsibilities on the premise of making profits, disclose information in a timely manner, and release social responsibility reports. However, the establishment of a social responsibility committee should also take into account the overall profitability of the company. For small and medium-sized enterprises, if there is no more remaining profit to be established, they can be established jointly by the same industry. Each company dispatches directors and managers to summarize the company's issues according to its own situation, while experts are jointly formulated or hired by each company. In this case, staff members can selectively join in to improve operational efficiency.

4.2. External Implementation Mechanism

In addition to the company's internal consciousness, as far as the overall form of companies in China is concerned, external supervision is more important. Summarize the views of most scholars, including legal system construction, policy norms and incentives, administrative supervision and management, industry association management, media and public supervision, education and publicity, third-party agency evaluation, etc. At the 2020 Annual Meeting of the China Business Law Research Association, Professor Ma Gengxin and Professor Zhu Yuan raised the issue of mechanism construction and development of "social enterprises". In the third session of the Company Law Amendment Tour Forum, the design of stakeholder protection system is specifically proposed, which focused on the scope of interest protection under the framework of Company Law and the expression of Company Law for the protection of stakeholders. This shows that the current academic trends will focus on legalization and realization of CSR. Legalization is the only way to realize CSR, and it is also the bottom line for companies to fulfill their social responsibilities. In this article, the discussion on the legalization of CSR is listed separately in the following text to show its importance. In addition, some scholars have mentioned the introduction of an independent third party for CSR assessment

[11], and some scholars have proposed to build a CSR evaluation system [12]. Combining the two points of view, this paper will highlight the role played by third-party CSR rating agencies and path suggestions.

4.2.1. The Relationship Between Corporate Credit Rating and CSR

Since the company is one of the special forms of the enterprise, the credit rating system of the enterprise also applies to the company. At present, China's enterprise credit information can mainly be obtained through the National Enterprise Credit Information Publicity System and third-party credit rating agencies. The credit rating of an enterprise is an important index to measure the credit status of an enterprise. The third-party professional credit rating agency conducts a relatively comprehensive evaluation of the enterprise, which can demonstrate the comprehensive capabilities of the enterprise to a certain extent. The system is mature in Western countries, and international authoritative professional credit rating agencies include Standard & Poor's, Moody's Investors Service Corporation and Fitch Ratings. With the development of China's market economy and financial industry, credit rating agency as an important service-oriented intermediary institution in the financial market, have also developed rapidly in a short period of time, providing important references for investors. The reason why credit publicity is mentioned here is also the hope that external factors to supervise the implementation of CSR. The creditworthiness of an enterprise includes capital ability as well as credit ability. In the current enterprise credit information the company's creditworthiness is mainly reflected in the company's operating conditions, investment information, enterprise quality, whether there are administrative penalties, product quality, and whether there is dishonesty records and so on. Most of these indicators are related to corporate business behaviors, and it is difficult to get from the above indicators as to whether CSR is fulfilled, and the degree or effect of fulfillment. In the modern economy and society, it is not only its asset strength, but also its comprehensive quality that can attract investment for enterprises. Every time investors invest, they will weigh risks and profits. For a company with strong assets and a high market share, if it has been subject to administrative penalties, a large number of consumer complaints, and the treatment of employees is only maintained above the basic standard, investors will also consider the company's long-term profitability when investing. Possibly, considering the probability of profit and risk.

Therefore, the author believes that the performance of CSR should also be included in the credit rating standard. Through the practical experience of professional institutions in the repeated evaluation of enterprises in different industries, combined with the corresponding laws, regulations and normative documents, the CSR evaluation system can gradually become clear and perfect. When the social evaluation system of enterprises in different industries gradually stabilizes over a period of time, the industry association may issue more standardized and uniform evaluation standards according to the evaluation system. And the relevant authorities can refer to these standards and issue appropriate and mandatory measures for the implementation of CSR. In this way, while perfecting the contents of the rating report and providing investors with more comprehensive information reference, it can also inform enterprises from the opposite way that they should attach importance to the implementation of social responsibility and promote the transformation of CSR system.

4.2.2. Problems Faced by the Credit Rating System of Chinese Enterprises

The credit rating system is used as a measure to prevent transaction risks in Western countries. It began to rise at the beginning of the 20th century and has been fully developed up to now. Looking at the international community, especially in the United States and Britain, credit transactions have been an important means in the operation of their economy. It relies on a complete credit evaluation mechanism to reflect the debt repayment ability and investment risk of rated objects. In China, local credit rating agencies have developed rapidly relying on the

economic development and huge market players, their business capabilities and influence have gradually expanded. At the same time they have gradually been in line with international standards based on Chinese characteristics.

But while developing, there are many problems to be solved. In the State Council's "Notice on Printing and Distributing the Planning Outline for the Construction of the Social Credit System (2014-2020)" (hereinafter referred to as the Notice), it points out that China's "credit service market is underdeveloped, the service system is immature, service behavior is not standardized. Service agencies lack credibility and lack of mechanisms to protect the rights and interests of credit information subjects." In the mean time, it also puts forward to promote the construction of business integrity and strengthen credit construction in production, circulation, finance, taxation, statistics, e-commerce and other fields. In addition to credit construction, the Notice also proposes to cultivate and standardize the credit service market, which points out the direction for the development of credit rating agencies.

First, China's credit rating mechanism lacks the sufficient support and protection of laws and regulations. Although the "Interim Measures for the Administration of the Credit Rating Industry" has been issued, China's credit rating legislation is still relatively lagging behind. So far, there is no clear upper-level law in the regulatory legal system for the credit rating industry. In the absence of institutional guarantees, it is difficult to maintain the independent, objective, and fair practice principles of rating agencies, and they can not effectively restrain and restrict irregular behaviors in the industry, which greatly increases the difficulty of the development of market regulations. In addition, the internal control system, rating methods, technical level, qualification management and other aspects of credit rating agencies also need to be further clarified through system construction [13].

Second, the motivation for enterprises to participate in credit rating is insufficient. Most of the enterprises with credit rating are large and medium-sized enterprises in individual industries, which often have more financing needs or are in urgent need of expanding the market. Because of the urgency of such needs, these companies have to demonstrate their development potential and trustworthiness through an objective rating. Other types of enterprises do not have much demand for the rating services of third-party professional institutions because of the mandatory collection and publicity of credit information by the state. Except this, the cost of credit rating services is high but the end result is also uncertain. Small and micro enterprises are likely to give up this service from a cost perspective when there is no urgent need.

Third, the level of credit rating agencies is uneven, and the social recognition of corporate credit rating results also needs to be improved. Because China's credit rating service market started late, although it has developed rapidly, there is still a big gap in the strength of institutions in the industry. Except for larger credit rating agencies such as DaGong Global Credit Rating Group Co.,Ltd., China Cheng Xin International Credit Rating Co.,Ltd., Shanghai Brilliance Credit Rating & Investors Service Co.,Ltd., which are active in the credit and securities industry, most institutions are still relatively weak business penetration capacity, backward evaluation techniques, inconsistent standards. This makes the public is skeptical about the rating results outside the large institutions.

4.2.3. Proposals for the Way to Realize CSR Through the Corporate Credit Rating System

According to the foregoing, third-party credit rating agencies play an indirect role in promoting the performance of CSR. From this path to achieve CSR, more consideration should be given to improving relevant systems and improving a unified credit rating standard system in various industries. Simply advocating to increase the performance of CSR in the proportion of credit rating is a bit hollow. After all, the direct purpose of corporate credit rating is to judge the enterprise's debt repayment capacity and willingness to repay. the credit status of the company

is still the focus of the rating. Therefore, in order to prevent the promotion from becoming a dead letter, it is necessary for various industry associations to organize the compilation of comprehensive credit evaluation indicators and weights of enterprises in various industries. There can be three specific measures:

The first is that the industry association conducts market research first and establishes a model for data analysis. The unified indicators and weights will be released for implementation by institutions that provide credit rating services in the industry. The second is that credit rating agencies, based on past evaluation practices and learning from the experience of large institutions, summarize the weights of CSR-sensitive indicators and recommendations in the market and submit them to trade associations. According to the feedback of various institutions, the industry associations, combined with the corresponding laws and regulations, compile the industry's evaluation of the index and weight of the social responsibility, and improve the CSR evaluation system. The third is the simultaneous action of both. Industry associations can cooperate with credit rating agencies with larger scale, stronger credibility, and higher technical level. Credit rating agencies conduct regular exchanges and meetings with industry associations to share relevant information collected and investigated in the evaluation practice and problems found. The industry associations conduct analysis based on real-time reflected data, and formulate items and proportions of social responsibility fulfillment effects in the rating. Some scholars have formulated the main evaluation elements of the credit evaluation index system of traditional Chinese medicine manufactures according to the methods of analyzing credit rating indicators of domestic and foreign pharmaceutical production enterprises through literature, including 9 parts: comprehensive ability, compliance operations, fair competition, financial situation, honesty and compliance, quality assurance, green development, safe production and integrity honor [14]. The author thinks that this provides a reference template for the compilation of comprehensive corporate credit evaluation indicators and weights in the industry.

In a word, the introduction of enterprise credit rating mechanism can indirectly promote the implementation of CSR and accelerate the improvement of enterprise comprehensive credit evaluation system. However, it should be emphasized that the relevant international standards can be used for our reference, but China's CSR evaluation system should have distinct Chinese characteristics, in line with the laws of China's economic operation, and conform to the development of the Chinese market. In October 2020, the Better Cotton Initiative (BCI) announced that it would no longer issue international certification for Xinjiang's cotton on the grounds of "forced labour" and "human rights violations" in Xinjiang Uygur Autonomous Region of China, which led to the "Xinjiang Cotton" incident in 2021. It can be seen that the promotion of CSR can not rely solely on the role of corporate credit rating agencies. It's the first to establish and improve China's CSR system standards and the legal system. On this basis, gradually strengthen the promoting role of credit rating agencies, and at the same time strengthen the supervision to them, and promote the legislative process of CSR in China.

5. Legal Regulation of CSR for Chinese Companies

5.1. The Scope of the Legal Norms of CSR

Professor Liu Ruifu once mentioned that it is fragile to base the realization of social responsibility on the basis of the company's conscience, so the external legal constraints on the realization of CSR should be emphasized [15]. Since CSR is a combination of legal and moral responsibility, external legal constraints should also be coercive and arbitrary. Reflecting on the relevant laws and regulations in China, the legislator has incorporated the CSR as the principled provision of the company's operation into the legal framework. The legal obligations

stipulated in the current departmental laws are the most basic parts of social responsibility, and are undoubtedly mandatory legal norms. In the current market economy environment in our country, social responsibility between morality and law needs to be regulated gradually. The gradual raise of the moral bottom line responsibility to legal responsibility is the focus of academic discussion and the key step to promote the quality development of CSR. According to China's unique market economic conditions, it will take some time to promote it. First of all, we should not rush for success. And secondly, we should not adopt the kind of "one size fits all" policy. If we rush to give the company excessive social responsibility, it is easy to lead to the loss its nature of profit, and become the main body of public welfare services, which is obviously upside down. At the same time, the "one size fits all" policy neither conforms to economic laws nor has highly operability, and may even dampen the companies' enthusiasm. At this stage, when the relevant legal system is not complete enough, we can use the power of judicial power to make up for the lack of legislation. Professor Jiang Jianxiang has suggested that the legalization of CSR should be limited to the scope of the moral bottom line, and the introduction of soft law accountability and judicial activism of CSR [16]. The author thinks that a correct view of the positive role of soft law and the expansion of judicial interpretation power on the applicability of soft law will help provide a basis for companies to perform their social responsibilities. However, how to define the extent and scope of the expanded interpretation remains to be determined. Therefore, judicial means can be used as an auxiliary mechanism. While considering the targeted "uplifting" of the moral bottom line responsibility, in order to avoid the eagerness and the "one size fits all" policies, the author suggests that both the main body and the social responsibility should be classified. Besides, according to the needs of society, while improving the CSR legal system as a whole, we also need to focus on the legal regulation of social issues in a state of emergency.

5.2. Current Emergency Regulatory Direction: Environmental Protection

Since the Reform and Opening Up, China's economy has developed rapidly, but we must know that behind this prosperity and development, we have sacrificed countless times the ecological environment on which we depend for our survival. In this regard, the 15th CPC National Congress identified the Strategy of Sustainable Development as a strategy "must be implemented in the modernization drive" in Chian, the 18th CPC National Congress incorporated the Construction of Ecological Civilization into the five-pronged approach to building socialism with Chinese characteristics and the report of the 19th CPC National Congress took the building of a beautiful China as our goal in the new era. The concept of "lucid waters and lush mountains are invaluable assets" has been deeply imprinted in the overall plan of China's economic development.

Regarding the issue of corporate social environmental responsibility, we might as well regard the company and the entire ecological environment (or nature) as the parties to the contract. Companies use the environment and resources in nature for profit, damaging the interests of natural environment and resource. As a consideration, the company should also bear the corresponding ecological compensation responsibilities for the acts that have committed to destroy the environment and consume resources. For example, using part of their profitable funds for environmental protection and ecological restoration activities. Even though we generally agree that the responsibility to protect the environment is ethical, based on the above reasons, the company's compensation should rise to legal liability and be strictly regulated.

In terms of specific measures, the author is inspired by Article 135 of Indian Company Law: "For companies with an annual turnover of 10 billion rubles or more, or a company with a net value of 5 billion rubles or more, or with a net profit of 50 million rubles or more, 2% of its average profit over the past three years needs to be used for CSR activities...", and recommended that enterprises up to a certain size, use a% of their average profits for CSR

activities every X years. These funds can be distributed proportionally to CSR activities of different nature. Specific distribution measures can be determined by various industry associations according to the overall situation of the industry. Among them, environmental protection can be agreed not less than the b% of this part of the enterprise funds.

Secondly, in accordance with Article 41 of the Overall plan of ecological civilization system reform triggered by the Central Committee of CPC and the State Council, PRC, "encourage all kinds of investment to enter the environmental protection market", The government and social capital cooperate to carry out environmental governance and ecological protection matters, and absorb social capital to participate in construction and operation, which provides the following path for enterprises to fulfill their social environmental responsibilities.

Firstly, enterprises will hand their funds that for environmental protection to the government's environmental protection department. Then the government environmental protection department set up a special pollution prevention and ecological restoration project team, together with the national environmental protection special funds, for environmental governance in the region. During this period, government departments are required to keep information open. Report on the application of funds, project progress, and results. The public and related donor enterprises have the right to supervise and make suggestions. The enterprise may jointly entrust a third-party professional environmental appraisal agency to test the project results. If there are objections to the results, they may report to the relevant departments. Regarding the management of this funds, the relevant regulations should also be strictly followed, and the special funds should be used exclusively, and the government audit department can check regularly or irregularly.

Secondly, environmental protection projects purchased or invited bids by the government may be operated by professional environmental protection companies. Corporate donations can be used for the construction of the preliminary projects. At the same time, companies and enterprises can also be appropriately encouraged to invest in the projects built. This can be both in the performance of social responsibility, and does not violate the nature of corporate profit, and the conflict between the two can be neutralized.

6. Conclusion

The CSR movement emerging in the international community has promoted the development of theories related to the realization of CSR in China. In discussion of how to implement CSR, the first is to determine the scope of stakeholders, and the second is to analyze the reasons that hinder the company from fulfilling social responsibility. Among these reasons, the more important ones are the complex nature of the CSR, the nature of the company's profitability, and the imperfection of laws and regulations. Besides, the ambiguity of objects and subjects also slows down the construction process of the relevant unified system to a large extent. Therefore, the legalization of CSR is a necessary condition to ensure that companies fulfill their social responsibility. This paper focuses on the analysis of the internal and external realization mechanism of CSR. The internal mechanism improvement mainly depends on the managers, the supervisory board and the board of directors. By strengthening the awareness of problem discovery from the grassroots to the top, it can improve the internal governance and mechanism construction. At the same time, the establishment of a CSR committee led by the board of directors can organize wisdom of multiple parties to solve the difficulties in fulfilling social responsibilities. In addition, in the external mechanism of CSR, this paper calls for attention to the role of third-party credit rating agencies, incorporating the performance of CSR into the evaluation system and increase its weight. In addition, the implementation of CSR also needs to strengthen the cooperation of the government, industry associations and credit rating

agencies to jointly construct a systematic enterprise credit evaluation index and systems. But in the final analysis, the top priority should accelerate the legalization of CSR. Due to the complex nature of CSR, the system design needs to be more operable. Therefore, the author suggests that within the framework of the existing legal system, the subject classification should be classified into levels and focused on the existing social problems to solve them in a targeted manner. Finally, this paper calls for speeding up the legal regulation of the company's social environmental responsibility, promoting cooperation between the government and enterprises, and jointly promoting ecological environment governance. The realization of CSR must be inseparable from legislative, judicial and institutional measures. How to make "companies should fulfill social responsibilities" is not an empty talk, is the common goal in the academic community. This paper still has unspecified measures in the exploration of the external mechanism of CSR, the realization mechanism of CSR has become one of the focus of the amendment of Company Law. A more in-depth and more feasible implementation path to achieve CSR is yet to be further explored.

References

- [1] Zhang Cheng V. Zhuzhou Qijiadianshang Decoration Engineering Co., Ltd., Lan Mou, etc., the case of contract of hired work, Zhuzhou Intermediate People's Court of Hunan Province (2019) Xiang 02 Min Zhong No.1267 Judgement.
- [2] Hu Xiaojing (2010). On CSR: Intension, Extension and Realization Mechanism, Law and Social Development. no.2, p69-77.
- [3] Li Jianwei (2010). On the Definition of the Connotation of CSR and the Construction of Realization Mechanism——From the Perspective of Directors' Fiduciary Duties. Tsinghua University Law Journal. no.2, p120-129.
- [4] Archie B. Carroll, Ann K. Buchholtz. Business and Society - Ethics and Stakeholder Management. Huang Qiping translation, Machinery Industry Press 2004 Annual edition.
- [5] Milton Friedman, The Social Responsibility of Business Is to Increase Its Profit, New York Times, Sept. 13,1970, p.32.
- [6] Zhu Tzuyun (2008) CSR: Wandering Between Legal Responsibility and Ethical Standard. Peking University Law Journal. no.1, p29-35.
- [7] Shi Tiantao, Du Jing (2010). Corporate Social Responsibility and Corporate Power Redistribution: From the Perspective of the Impact of Diversified Capital Composition on Corporate Governance. Social Science Front. no.1, p 200-205.
- [8] Zhou Shurong (2006). CSR and the Reconstruction of China's Director System. Commercial Research. no.5, p105-109.
- [9] Jiang Daxing (2009). How CSR Became a "Tentative Tiger"——The Design of the Social Responsibility Committee of the Board. Tsinghua University Law Journal. no.4, p21-37.
- [10] See the foreword [10].
- [11] Cheng Xinhe (2011). CSR from the Perspective of Economic Law. Gansu Social Sciences. no.2, p126-131.
- [12] Wang Tingting (2017). Legal Regulation of CSR. People's Tribune. no.15, p102-103.
- [13] Bai Xiaoyun, Li In (2018). Research on Issues of Credit Rating Agency. Qinghai Finance. no.9, p62-64page.

- [14] Yuan Xuedan, Mao Zhenhua (2020). Research on the Construction of Credit Evaluation Index System for Chinese Medicine Manufacturers——Based on the Perspective of Industry Self-Discipline. China Price. no.6, p89-92.
- [15] Guo Xiuhua, Crown Yu (2008). Summary of the International Symposium on CSR and Corporate Governance. Peking University Law Journal. no.1, p75-82.
- [16] Jiang Jianxiang (2010). The Legalization of CSR. China Legal Science. no.5, p123-132page.